

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

2012 MAR 15 PM 4:00

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

K GRESHAM

ORIGINAL

No.

P1300CR2010-01325

BEFORE: THE HONORABLE GARY E. DONAHOE
VISITING JUDGE OF THE SUPERIOR COURT
APPEARING TELEPHONICALLY IN ROOM 302
YAVAPAI COUNTY, ARIZONA

PRESCOTT, ARIZONA
FRIDAY, MARCH 9, 2012
11:05 A.M. SESSION

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Hearing Re: Status Conference

LISA A. CHANEY, RPR, CSR, CR
Certified Reporter
Certificate No. 50801

ORIGINAL

A P P E A R A N C E S

Appearing telephonically on behalf of the Plaintiff:

Yavapai County Attorney
By: Mr. Jeff Paupore, Deputy
Mr. Steven Young, Deputy
255 E. Gurley Street
Prescott, Az 86301

Appearing telephonically on behalf of the Defendant:

Mr. Craig Williams, Attorney at Law
Mr. Greg Parzych, Attorney at Law

Also Present:

Mr. Scott Orr, Prescott Daily Courier

FRIDAY, MARCH 9, 2012
11:05 A.M. SESSION

(Appearances as heretofore noted.)

11:05AM

THE COURT: This is P1300CR2010 Number 01325. It's the matter of Steven DeMocker and at this time I had requested a conference call to see how we proceed regarding the Court of Appeals' decision order regarding the defense motion to disqualify the Yavapai County Attorney's Office or dismiss the case and perhaps I could have everybody announce your appearances.

MR. YOUNG: Steve Young with the County Attorney's Office.

11:06AM

MR. PAUPORE: Jeff Paupore with the County Attorney's Office.

MR. WILLIAMS: This is Craig Williams for Mr. DeMocker.

MR. PARZYCH: Judge, this is Greg Parzych on behalf of Mr. DeMocker.

11:06AM

THE COURT: Thank you.

And, Mr. Williams, are we waiving Mr. DeMocker's presence today?

11:06AM

MR. WILLIAMS: Yes, Judge. For the record I talked to Mr. DeMocker and we have agreed to waive his presence for this hearing.

1 THE COURT: Thank you.

2 The first question I had, and maybe, I don't
3 know if you thought about this, Mr. Paupore and
4 Mr. Young, is how does the county attorney litigate this
11:06AM 5 case?

6 And let me tell you what I'm thinking is
7 that if the defense team hasn't, and I don't know if you
8 have or not, viewed the sealed documents or pleadings
9 and orders, as a part of this hearing I'm going to have
11:06AM 10 to look at these things and see what information was in
11 the pleadings and orders, all of these sealed documents,
12 and if you were to do that during the hearing, view
13 these documents that perhaps you haven't seen before,
14 how do we ever think that the case hasn't been tainted
11:07AM 15 before, it certainly would be then.

16 So are you going to get your civil division
17 lawyers involved or how are you going to do this?

18 MR. YOUNG: No, I'm going to handle the
19 hearing, Your Honor. We don't think there's an issue
11:07AM 20 there.

21 THE COURT: Well, again, if -- well,
22 Mr. Williams or Mr. Parzych, if you proceed during the
23 hearing, can come back and say, well, the whole case is
24 tainted now.

11:07AM 25 MR. WILLIAMS: Well, yes, Judge, there's --

1 in particular, there is a transcript that was ex-parte
2 and sealed that was viewed by the county attorney and I
3 think that the court absolutely has to see that and
4 that's going to become an issue so by all events should
11:08AM 5 be published to the press and I do think that it would
6 taint the case.

7 THE COURT: Well, I'm not worried about the
8 press at the moment. I think that in order for me to --
9 the way that I read this case is that the state has to
11:08AM 10 firmly convince me that the viewing of these documents
11 by employees of the county attorney's office did not
12 directly or indirectly affect this case to the
13 defendant's prejudice.

14 In order to do that I have to see all of the
11:08AM 15 documents that any of the employees of the county
16 attorney viewed, any of these sealed documents,
17 pleadings, orders, whatever, because I need to see the
18 information in them to see how this information could
19 have affected the case and whether it did or not, and
11:09AM 20 then I'm going to have to hear from all -- I think I'm
21 going to have to hear from every employee in the county
22 attorney's office that saw any of these documents and
23 find out what they saw, when they saw it, why they
24 looked at them, and what they did with the information.

1:09AM 25 And I guess what I'm driving at here is that

1 unless the defense is willing to waive any future
2 prejudice that Mr. Paupore -- or if the prosecution team
3 is involved in this hearing, then they're necessarily
4 going to see all of these documents, everything that's
11:09AM 5 claimed to be attorney-client privilege, if they haven't
6 seen them before they're going to have to see them now
7 in order to litigate this case, and it seems to me that
8 the only way that the county attorney can claim, well,
9 there's no prejudice going forward is to get their civil
11:09AM 10 division, other lawyers involved, and develop a conflict
11 wall regarding this hearing.

12 MR. YOUNG: Judge, this is Mr. Young. I
13 don't agree with that premise. I think that there can
14 be ways -- you, obviously, do have to get all of the
11:10AM 15 documents that we're talking about and we'll talk about
16 those documents in a moment at the appropriate time.

17 There are ways in which perhaps only the
18 face sheets can be shown to the prosecution or matters
19 can be blacked out, but I see no problem whatsoever with
11:10AM 20 our office holding this hearing, because when you view
21 the documents, you're going to find that there's no
22 merit to this motion.

23 THE COURT: Well, if that's the way that you
24 want to proceed that's fine, but I'm just warning
1:10AM 25 everybody that if I then get a subsequent motion to

1 disqualify the county attorney's office we're going to
2 have to go through all of this again to show that this
3 hearing in and of itself by the county attorney viewing
4 documents or potentially viewing documents that were
11:11AM 5 sealed and contained what the Court of Appeals says is
6 attorney-client privileged matters or information, then
7 we're going to have to go through this whole thing
8 again.

9 MR. PARZYCH: Judge, if I may, this is Greg
11:11AM 10 Parzych. One thing I wanted to make clear, the Court of
11 Appeals did request and they did view all of those
12 sealed documents. They asked us to provide those. So
13 the Court of Appeals they have those documents and
14 presumably they reviewed those before they made their
11:11AM 15 decision.

16 THE COURT: Yeah, so I'm going to have to do
17 the same thing, and I guess what I'm saying is that,
18 Mr. Young thinks that he can litigate this without
19 seeing the documents, but I don't know how because
11:11AM 20 people are going to have to get up and testify and say I
21 got certain information from these documents and this is
22 what I did with it or didn't do with it.

23 So I'm not sure how the current prosecution
24 team cannot be exposed during this hearing from
1:12AM 25 testimony about attorney-client privilege matters as to

1 what the Court of Appeals says was attorney-client
2 privilege matters, even if they don't look at the
3 documents, they're going to have to ask witnesses, well,
4 what information did you get and what did you do with
11:12AM 5 it.

6 MR. PARZYCH: Right. And certainly, Judge,
7 we don't intend to waive that, that's our whole issue to
8 begin with.

9 THE COURT: Yeah, so that's my concern is
11:12AM 10 that if the county attorney hasn't been -- doesn't get
11 disqualified on the initial round, I'm going to have to
12 go through another round of this for the county attorney
13 saying, well, the information I learned in the course of
14 this hearing hasn't affected the case adversely or to
11:12AM 15 the defendant's prejudice.

16 So, Mr. Young, how do you get around the
17 issue of, okay, you put a witness on the stand, say, one
18 of the victim's advocates and here she testifies about
19 the information that he or she saw from these sealed
11:13AM 20 documents. You're going to hear the information.

21 How do I get around the problem of, you
22 know, saying how is that not going to taint the case
23 going forward?

24 MR. YOUNG: Judge, I don't think that any of
1:13AM 25 these people who are, quite frankly, lower level

1 employees are going to remember what the contents of
2 these documents are, and let me talk to you about sealed
3 the documents. The sealed documents are not sealed from
4 the county attorney's office. They are sealed from the
11:13AM 5 public. We have a right to the sealed documents. So
6 that cuts this hearing in half right there.

7 THE COURT: Well, that's not the way that I
8 read the Court of Appeals' decision.

9 MR. YOUNG: I think that the Court of
11:13AM 10 Appeals is misinformed.

11 THE COURT: Then you better file a Motion to
12 Reconsider or something because the way that the Court
13 of Appeals' decision reads is that there were -- even
14 one of the footnotes indicates that there may have been
11:14AM 15 ethical violations by looking at the sealed documents.

16 So I'm bound by what the Court of Appeals
17 says. I'm not relitigating that. So, again, the
18 burden's on you and if you have some other way to prove
19 it, but I think that I have to hear from everybody that
11:14AM 20 looked at these documents and what they saw and what --
21 and why they saw them or why they looked at them and
22 what they did with the information.

23 MR. YOUNG: We intend to put that on, Judge.
24 If I may, if you look at the -- do you have the clerk's
1:14AM 25 report regarding the sealed documents?

1 THE COURT: I don't have it here in front of
2 me. I've got it in one of the files or attached to one
3 of the pleadings. I'd have to dig it out of my file
4 folder, but I don't have it in front of me.

11:14AM

5 MR. YOUNG: Judge, some of those documents
6 deal with Grand Jury minutes and a transcript of the
7 Grand Jury proceedings. Clearly, the state is entitled
8 to those so that should be excluded from the hearing.

11:15AM

9 They also deal with jury messages. The
10 state was privy to those jury messages so, clearly, that
11 class of document is excluded from this hearing.

11:15AM

12 Also, interestingly, there were sealed
13 motions from the state itself on this list, Judge, so,
14 clearly, those are excluded from this hearing and then
15 there were some defense motions that were copied to
16 attorneys for the state so, clearly, those are excluded
17 from this hearing.

11:15AM

18 Lastly, there are a number of 15.9 Orders
19 that are on this sealed documents list that are also on
20 the ex-parte sealed documents list which we already know
21 were routed to the county attorney's office by the
22 clerk's office itself. So they're double counted by the
23 defense in their original motion. So we've really
24 narrowed down the class of documents that we're talking
25 about here, Judge.

1:16AM

1 THE COURT: Well, I don't know. The
2 burden's on you. So if you have a plan going forward,
3 that's great. So I'm just warning you of this, that if
4 during the course of this hearing you see documents or
11:16AM 5 hear testimony about these documents that you claim that
6 the county attorney hasn't seen, that the prosecution
7 team hasn't seen before and hasn't been used in any way
8 that would adversely affect the case to the prejudice of
9 the defendant, then you've got a problem.

11:16AM 10 So if you want to go forward knowing that or
11 having been warned of that, that's fine with me, but I'm
12 just alerting you to the issue. You may need to talk to
13 somebody about it and think about it because when I read
14 this opinion that was the first thing that I thought
11:16AM 15 about.

16 How does the county attorney, at least the
17 prosecution team, litigate this without there being an
18 appearance that they've tainted the case, if they
19 haven't already tainted the case now by hearing
11:16AM 20 testimony about what's in these documents?

21 MR. YOUNG: Judge, my suggestion there is
22 that we can't have our civil division handle this
23 because some people in our civil division are alleged to
24 have viewed these documents and I think what the defense
1:17AM 25 lawyer view is you impute anyone from the county

1 attorney's viewing of these to the entire county
2 attorney's office.

3 I'm confident that we can represent
4 ourselves in this hearing, Judge, and if there is an
11:17AM 5 issue, I feel the candor would be on the defense to ask
6 for an in camera inspection by the Judge regarding the
7 particular documents.

8 THE COURT: Well, it's not -- I'm going to
9 look at all of these documents. I've got to see all of
11:17AM 10 these documents any way, but there's not going to be in
11 camera testimony from somebody at the county attorney's
12 office about what he or she saw in these documents and
13 what they did with them.

14 They're going to have to testify about the
11:17AM 15 substance of these documents and I suspect that
16 Mr. Williams is going to hand them a document and say
17 here it is, here's the information that was in it, what
18 did you do with this, and why did you look at it.

19 So that's not going to be in camera, that's
11:18AM 20 going to be in an open courtroom, and the county
21 attorney's prosecution team is going to be there and if
22 they -- if the case hasn't been tainted before, there's
23 going to be the appearance of taint then.

24 MR. YOUNG: I don't think --

1:18AM 25 THE COURT: Wait a second.

1 So if the civil division can't do it, maybe
2 the other option is that you hire outside counsel to
3 come in and litigate this one issue, but I just think
4 that you're walking on a minefield if you think that the
11:18AM 5 prosecution team can go forward with this without the
6 prospect or appearance of a taint go forward, because I
7 just -- I just can see the hearing coming up.

8 I can see what these people are going to
9 testify to at this hearing and they're going to say,
11:18AM 10 well, I looked at this document and it contained x, y,
11 and z because now that my memory has been refreshed by
12 looking at it and this is what I did with it.

13 So you're going to hear all of this what the
14 Court of Appeals said is attorney-client privileged
11:19AM 15 matters. You're going to hear that in an open
16 courtroom.

17 MR. YOUNG: I don't think that that's going
18 to be the case with most of these witnesses. I think
19 that they're going to say I don't remember viewing a
11:19AM 20 document on such and such a date. I don't dispute this
21 report and I have no idea what that document says and I
22 never talked to the prosecutors regarding this document.

23 THE COURT: Okay. Well, you've been fairly
24 advised or warned by me and you got -- you got to prove
1:19AM 25 to me beyond a reasonable doubt, which means you have to

1 firmly convince me that this information did not
2 directly or indirectly affect the case in any way that
3 it would prejudice the defense and -- so if you think
4 that you can do that without tainting the case going
11:20AM 5 forward, good luck, but I'm just alerting you to the
6 fact that I'm not so sure that that's possible.

7 MR. YOUNG: I appreciate it, Judge. Thank
8 you.

9 THE COURT: So, Mr. Williams, perhaps you
11:20AM 10 can -- can you have all of these documents that you
11 think -- all of these sealed documents -- well, let me
12 ask, how were they provided to the Court of Appeals?
13 Were they provided in electronic form or hard copies or
14 how?

11:20AM 15 MR. WILLIAMS: No, we gave them hard copies,
16 Judge.

17 THE COURT: Can you make a copy of those and
18 perhaps give them to Judge Mackey's Judicial Assistant
19 and then she can mail those to me?

11:20AM 20 MR. WILLIAMS: Absolutely, Judge.

21 THE COURT: I don't know how many there are,
22 but I need to start reviewing these before we -- before
23 the hearing. So --

24 MR. PARZYCH: Judge, if I may, Judge, I have
1:21AM 25 -- I believe the copies -- the only copies that the

1 defense has left I actually have them in my office in
2 Maricopa County. So if you're somewhere in Maricopa
3 County we can have our investigator copy them and get
4 them to you because they're already down here.

11:21AM

5 THE COURT: Oh, okay. I live in Phoenix.
6 So does -- has anybody scanned them? Does anybody have
7 an electronic form?

8 MR. PARZYCH: They're pretty thick. I
9 don't --

11:21AM

10 MR. WILLIAMS: I'm sorry I interrupted. No,
11 they're not scanned. They're pretty voluminous.

12 THE COURT: Okay. All right. Well, yeah, I
13 can have them -- I was just thinking how I could get
14 them.

11:21AM

15 MR. PARZYCH: Do you still have a mailbox at
16 the courthouse, Judge?

17 THE COURT: No, I don't. They'd have to --
18 the investigator would have to come by my house and I'm
19 kind of hit-and-miss when I'm at home so -- I don't have
20 an office down here or anything. So --

11:22AM

21 MR. PARZYCH: I guess we can just mail them
22 the way that you originally suggested. I just thought
23 if you had some drop box, we could drop them off.

24 THE COURT: No, I don't at the courthouse.

11:22AM

25 Yeah, just get them to Cheryl and then she can mail them

1 to me because it's going to -- I think we're going to
2 have to take a little bit of time for --

3 So I guess the next issue or the next thing
4 is I was wondering about what you all wanted to do about
11:22AM 5 disclosure and discovery as suggested by the Court of
6 Appeals.

7 Mr. Williams, have you thought about that at
8 all or what you would like to see from the state?

9 MR. WILLIAMS: We have, Judge. We haven't
11:23AM 10 really -- we were waiting to talk to you and try to get
11 some scheduling done before we actually fired off a
12 request for disclosure from the state.

13 So in my mind the disclosure was kind of the
14 cart before the horse and if we had a date that we were
11:23AM 15 going to shoot for to have these hearings, then we could
16 say, okay, here's the deadline for doing this.

17 THE COURT: Well, my thought was that I'd
18 have the state do a disclosure statement that lists all
19 of the employees in the county attorney's office that
11:23AM 20 viewed any of the sealed documents and the disclosure
21 statement I'm going to -- I would require it to be
22 pretty detailed and have to -- at least to the extent
23 that these employees were called, when they viewed them,
24 what each of them viewed, why they viewed them, and what
1:24AM 25 they did with the information, if anything.

1 So if I had the state do that in about 30
2 days, I was thinking perhaps by April 9th, if that would
3 give them time, and then I thought the second step would
4 be to have -- allow the defense team, if you want to
11:24AM 5 interview these people, give you until the end of April
6 to do that, and then have you do a disclosure. Have the
7 defense do a disclosure, say, for any of your witnesses
8 and what they're going to say and detailing what
9 prejudice or how you think this affected the case and
11:24AM 10 have you do that perhaps by May. I was thinking
11 May 4th.

12 And then because the Court of Appeals wants
13 me to do detailed findings of fact and conclusions of
14 law, have both sides submit a proposed findings of fact
11:24AM 15 and conclusions of law perhaps by May 9th, set a hearing
16 date for May 14th and go from there.

17 I don't know how many days you might need.
18 I don't know how many people are going to have to
19 testify, but set aside two or three days for the
11:25AM 20 hearing.

21 MR. WILLIAMS: That sounds like a good plan
22 to me, Judge. This is Craig Williams.

23 MR. PARZYCH: Judge, the only concern that I
24 have, and I know that you've already gone through this,
11:25AM 25 but if the state's going to supply the disclosure

1 statement and that disclosure statement has what people
2 viewed and what they saw, again, we're in that same
3 issue that the court brought up, that even in the
4 disclosure statement we may be getting into areas that
11:25AM 5 are, you know, the current attorneys assigned to the
6 case are going to be seeing things that they have not
7 seen before.

8 THE COURT: Who was that talking?

9 MR. PARZYCH: I'm sorry, Judge, this is Greg
11:25AM 10 Parzych.

11 THE COURT: Well, that's -- I've warned
12 them.

13 MR. PARZYCH: Right.

14 THE COURT: I told the state that they're
11:26AM 15 walking through a minefield and if that happens, then
16 they're going to have to show that this whole process,
17 as part of this hearing, if we go on May 14th, that
18 they're going to become witnesses too, Mr. Paupore and
19 everybody on the prosecution team or anybody involved in
11:26AM 20 the disclosure statement of the hearing, they're going
21 to probably be witnesses to this and that's why I'm
22 concerned that they've got a real -- the prosecution
23 team has a real problem here, but if they don't see it,
24 I can see the freight train coming down the tracks here.

1:26AM 25 MR. PARZYCH: And, Judge, I appreciate it,

1 and, again, I just wanted to bring it up that I think
2 that the disclosure statement in and of itself may start
3 that train rolling earlier than you even anticipated.

11:26AM 4 THE COURT: Yeah, that's why I'm suggesting
5 that they might need to get outside counsel to do this.

6 MR. YOUNG: Judge, this is Mr. Young. We'll
7 consider that suggestion. I just don't want to commit
8 to anything right now. I didn't anticipate that this
9 would be an issue. We've already done a report that's
11:27AM 10 been attached to prior pleadings where these employees
11 have been interviewed. So, I mean, that's already been
12 done. That's, in essence, what our disclosure statement
13 would consist of.

14 THE COURT: Well, and that may be one of the
11:27AM 15 issues at trial -- at the hearing is that -- I don't
16 know what the defense is going to say about it, but they
17 may want to say, okay, well, how did that -- how did
18 that -- somebody's going to have to show to me that this
19 whole investigation hasn't tainted the case.

11:27AM 20 So it's not only the prior viewings but
21 everything that occurred afterwards is going to have to
22 show me that this information that was obtained wasn't
23 viewed in any way, in the words of the case that has
24 been cited, directly or indirectly adversely affected
11:28AM 25 this case.

1 So that's the burden. I think that the
2 state has a high burden here and they've got to disclose
3 a lot of loose ends or answer a lot of questions in my
4 mind to firmly convince me that the case hasn't been
11:28AM 5 prejudiced in any way.

6 So how you do that, that's for you all to
7 decide, and who does it for the state, that's for you to
8 decide too, but I think that you've been fairly advised
9 that this whole process needs to be viewed very
11:28AM 10 carefully and somebody needs to analyze who can do it
11 without the appearance that the case has been tainted
12 going forward.

13 The schedule that I laid out is that going
14 to work for the state?

11:29AM 15 MR. YOUNG: Judge, in light of the court's
16 comments regarding the potential that we may need
17 outside counsel to handle this, we're going to need more
18 time. I'm not saying that we're going to get outside
19 counsel to do this, Judge. We still have to analyze
11:29AM 20 that, but we're going to need some more time if that's
21 the case.

22 THE COURT: Well, let's go through the
23 steps. When does the -- the steps that I had were,
24 first, the state's disclosure, and then two or three
1:29AM 25 weeks for defense interviews, third step was having the

1 defendant do a disclosure statement, and after that
2 having both sides then propose findings of facts and
3 conclusions of law to me, and then the next step would
4 be a hearing date.

11:30AM 5 So give me a timeline to do all of that.

6 MR. WILLIAMS: Well, Judge, could I suggest
7 that maybe the state have an opportunity to talk this
8 over and analyze this and maybe set a hearing date next
9 week so we can revisit it?

11:30AM 10 MR. PARZYCH: I won't be available next
11 week.

12 THE COURT: I'm sorry?

13 MR. PARZYCH: Judge, this is Greg Parzych.
14 I'm not available next week. I'm out of state next
11:30AM 15 week.

16 MR. WILLIAMS: I'm sorry, I forgot that.
17 How about the week after that?

18 THE COURT: We're talking about the week of
19 the 19th. How about we do it on the 19th? That's when
11:30AM 20 we were suppose to do our pretrial conference.

21 MR. WILLIAMS: That's okay with the defense,
22 Judge.

23 MR. PARZYCH: Yes, Judge, this is Greg
24 Parzych, works for me.

1:30AM 25 MR. YOUNG: Judge, Mr. Young, yes, that

1 works for the state. Do you plan on it being telephonic
2 or just having -- holding it in person?

3 THE COURT: No, I was going to do it
4 telephonic because all I would plan to do is set the
11:31AM 5 schedule for this, as I said, we have the steps and
6 perhaps between now and the 19th you all can discuss
7 among yourselves a proposed timeline too. I just had
8 that timeline that I had roughed out thinking that would
9 give everybody enough time.

11:31AM 10 So what I'm going to have to do is I'm going
11 to vacate -- I'm going to have to vacate the final
12 pretrial conference and set a telephonic conference for
13 March, I guess, it's March 19th. We had it at 9 o'clock
14 so let's just do that at 9 o'clock because I think
11:31AM 15 that's when I had the pretrial conference starting.

16 I'm going to vacate the trial date too
17 because there's no way -- this Court of Appeals'
18 decision is going to cause a significant delay in the
19 trial and then I'm going to have to continue the last
11:32AM 20 day indefinitely until this whole thing has been
21 resolved.

22 So I'll talk to you on the 19th and if you
23 decide on outside counsel or some other attorneys being
24 involved, have them on the conference call.

1:32AM 25 MR. YOUNG: Yes, sir. Any other dates that

1 have been set or, say, reply times? There's a
2 deposition that we had asked for for Jim DeMocker that's
3 set for next week.

4 Are those on hold, vacated, could you give
11:32AM 5 us some guidance in that area, Your Honor.

6 THE COURT: That, as far as I'm concerned,
7 whatever you need to do to get the case ready for trial
8 still needs to be done. So unless you work out an
9 agreement with Mr. James DeMocker to continue his
11:33AM 10 deposition or something, that's how you work that out,
11 but I haven't -- I don't want this to cause everybody to
12 say, well, we're stopping everything. I want everybody
13 to continue to prepare for trial.

14 MR. PAUPORE: Your Honor, this is Jeff
11:33AM 15 Paupore. Mr. Williams and I actually did talk about the
16 James DeMocker deposition which by court order is set
17 for the 14th and then Mr. Williams is likely to
18 follow-up with this on his -- on our agreement to depose
19 his expert who is ill.

11:33AM 20 I don't know if the court has -- on the
21 James DeMocker matter I'm not sure if the court has seen
22 Bruce Griffin's Motion for Reconsideration of the
23 ordering of his client's deposition.

24 THE COURT: I got that. I just printed it
1:34AM 25 out this morning and I kind of glanced at it. At least

1 my preliminary thought is that all of those issues
2 should have or could have been raised in the Virginia
3 Court. So I'm going to read it again, but I'm not
4 inclined to grant it at least preliminary. That's my
11:34AM 5 preliminarily thought on it. That any issues about
6 jurisdiction, statutory interpretation, that the
7 Virginia Court has the jurisdiction to litigate all of
8 that, and it should have been litigated when they
9 appeared in front of the Virginia Court. So I'm not so
11:34AM 10 sure that I'm going to do anything with that, but I want
11 to read through it. I just glanced at it when I printed
12 it out this morning.

13 MR. PAUPORE: That was my thought too, Your
14 Honor, and Mr. Williams -- we would like to, because it
11:34AM 15 took a lot of effort to get this deposition scheduled,
16 we would prefer to proceed ahead and hold Mr. DeMocker's
17 deposition on the 14th if he appears.

18 THE COURT: Yeah, and I don't want to
19 ex-parte Mr. Griffin here on this, but since Mr. Parzych
11:35AM 20 asked about it, I don't want to argue this now. I'm
21 just telling you -- suggesting or telling you my
22 preliminary thoughts on this, and on a Motion to
23 Reconsider I'm not required to order a response. I can
24 rule on it just on the pleading and I'm just giving you
1:35AM 25 my preliminary thought.

1 Once I read through it again this morning,
2 if I want a response, I'll order it, but I'm just
3 relating my -- at least since Mr. Parzych asked about
4 it, my preliminary thoughts on this, and I'm not trying
11:35AM 5 to ex-parte Mr. Griffin, but that's what I'm thinking.

6 So, again, if you've got an expert scheduled
7 to be interviewed and you've got depositions or
8 interviews, other interviews, get them out of the way
9 because then when we do reset a trial date, then we
11:36AM 10 don't have to worry about, you know, last minute
11 preparation and everybody scrambling around to do
12 interviews. They can concentrate on getting ready for
13 trial.

14 MR. WILLIAMS: Judge, this is Craig
11:36AM 15 Williams. First, I don't think that it was Mr. Parzych
16 that asked about it. I think it was Mr. Young that
17 asked about it.

18 THE COURT: Oh, I'm sorry. I thought it was
19 Mr. Parzych.

11:36AM 20 MR. WILLIAMS: No, I think that it was
21 Mr. Young, but here's my position, the defense's
22 position on the interviews.

23 I talked to Mr. Paupore and I told him that
24 I felt that the Jim DeMocker deposition was pursuant to
1:36AM 25 a court order and that I would honor a court order and

1 go and participate in that and I felt that if we have to
2 preserve one of my experts, because he has kidney cancer
3 and I'm worried about his health, if we had to do that
4 Mr. Paupore has been gracious enough to do that in a
11:37AM 5 deposition form, but as far as the interviews go, I
6 think that -- and I know that this sounds like you could
7 be arguing out of both sides of your mouth here because
8 I'm going to say, well, I'll do the depositions, but I'm
9 not going to do the interviews because, frankly, I don't
11:37AM 10 think that the county attorney is the appropriate party
11 to be trying this case and I'm uncomfortable doing
12 interviews with them anymore.

13 I said that before when this first came up
14 when Judge Darrow was on the case and I'm reiterating
11:37AM 15 this now, and I don't mean any offense to the Yavapai
16 County Attorney, and I did tell Mr. Paupore that I'm not
17 comfortable going forward with interviews with him.

18 If the court orders me to I will obey a
19 court order, but I disagree with Mr. Young that there's
11:37AM 20 no cause of action here. I think that the cause of
21 action is huge. So they're not the appropriate party in
22 my opinion. So whatever input the court has on that I
23 welcome.

24 THE COURT: I hadn't thought about it. I
1:38AM 25 guess -- I guess I'll hear from Mr. Paupore, but just

1 thinking out loud it sounds like you may be right. If
2 the case -- it's how this motion is to disqualify is
3 resolved and the county attorney hasn't yet -- hasn't
4 yet firmly convinced me that this case hasn't been
5 affected to the defense prejudice, I guess maybe they
6 shouldn't be doing any interviews.

11:38AM

7 Now, if you need to do a video tape
8 deposition or a deposition of some witness that's going
9 to likely pass away, I guess you can waive -- you can
10 waive the conflict on the record and do the deposition
11 if you need to, or if the state is willing to do it,
12 that's between you all, and I don't know about James
13 DeMocker, you know, I could see James DeMocker appearing
14 for a deposition and pleading the fifth on every
15 question. So I'm not so sure how that's going to shake
16 out. So that may be -- that may not be a real issue.

11:39AM

11:39AM

17 So -- but I guess if the county attorney
18 were to take the deposition and then later be
19 disqualified, a new county attorney or the new
20 prosecution team would just take Mr. DeMocker's -- James
21 DeMocker's deposition again, but those are issues that I
22 think that the county attorney kind of needs to sort out
23 and analyze because the way that this decision order
24 reads it's kind of like the presumption of innocence.
25 The defendant is presumed innocent until proven guilty

11:39AM

1:40AM

1 beyond a reasonable doubt at least the way that I read
2 this decision order.

3 The state -- there's a presumption here that
4 the defendant has been prejudiced and that until the
11:40AM 5 state proves otherwise, beyond a reasonable doubt, then
6 the taint continues. So that's the way I'm looking at
7 it.

8 MR. WILLIAMS: Well, Judge, I will obey the
9 court order. As far as the deposition goes, I'll make a
11:40AM 10 record when I get there and we'll proceed accordingly at
11 least from the defense point of view.

12 THE COURT: Yeah, I'm not -- I'm not
13 vacating this. If the county attorney looks at this and
14 decides that they want to reschedule the deposition
11:41AM 15 until after -- after this motion to disqualify the
16 county attorney's office is resolved, that's okay with
17 me. I'm not telling them what to do.

18 I'm just suggesting that they need to
19 carefully analyze the decision order from the Court of
11:41AM 20 Appeals. It's going to affect the case going forward
21 until that issue is resolved.

22 So they can look at it and make their
23 decisions and, you know, they're smart people, they can
24 decide what to do, or have other attorney or outside
1:41AM 25 counsel take Mr. DeMocker's deposition. I don't know.

1 There's some options there, but it's up to them to
2 decide.

3 So at least for today let's let me order,
4 it's ordered setting another status conference,
11:41AM 5 telephonic status conference, on March 19th at 9 a.m.
6 and it's further ordered vacating the pretrial
7 conference that was set that day, and it's further
8 ordered vacating the trial date.

9 It's further ordered continuing the last day
11:42AM 10 until further order -- indefinitely until further order
11 of the court. So I will talk to you on the 19th.

12 And, Mr. Parzych, there's no -- or,
13 Mr. Williams, there's no hurry in getting those
14 documents to me since this is going to play out for
11:42AM 15 awhile but, you know, whenever is convenient for you,
16 just mail the documents to Cheryl, and she'll mail them
17 to me.

18 MR. WILLIAMS: Okay. Judge, we'll get it
19 done.

11:42AM 20 THE COURT: Okay.

21 MR. PARZYCH: Thank you, Judge.

22 THE COURT: I'm not sure who's speaking.

23 MR. PARZYCH: Sorry, Judge, this is Greg
24 Parzych.

11:42AM 25 THE COURT: Yeah, go ahead.

1 MR. PARZYCH: No, I just said thank you.

2 THE COURT: Oh, okay. You all have --

3 Mr. Paupore, anything further?

4 MR. PAUPORE: Nothing, Your Honor. Thank

11:42AM 5 you.

6 THE COURT: Okay. You all have a good day
7 and thanks for taking the time to talk to me today. I
8 appreciate it.

9 MR. WILLIAMS: Thank you, Judge.

11:42AM 10 THE COURT: All right. Bye-bye.

11 (Whereupon, the proceedings were concluded.)

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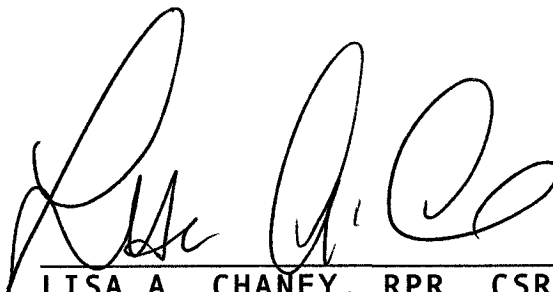
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C E R T I F I C A T E

STATE OF ARIZONA)
)
COUNTY OF YAVAPAI)

I, Lisa A. Chaney, a Certified Reporter, in the State of Arizona, do hereby certify that the proceedings had in the foregoing entitled matter are contained fully and accurately in the shorthand record made by me thereof, and that the following pages constitute a full, true and accurate transcript of the said shorthand record, all done to the best of my skill and ability.

DATED this 14th day of March, 2012.



LISA A. CHANEY, RPR, CSR, CR
Certified Reporter
Certificate No. 50801